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Joint Inspection Unit

Administration of justice at the United Nations

Report of the Joint Inspection Unit on reform of the administration of justice in the United Nations system: options for higher recourse instances

Note by the Secretary-General

The Secretary-General has the honour to transmit for the consideration of the General Assembly his comments and those of the United Nations System Chief Executives Board for Coordination on the report of the Joint Inspection Unit entitled "Reform of the administration of justice in the United Nations system: options for higher recourse instances (JIU/REP/2002/5)".

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Summary

The report of the Joint Inspection Unit (JIU) entitled "Reform of the administration of justice in the United Nations system: options for higher recourse instances" is a continuation of the study undertaken by JIU on this subject in 2000, entitled "Administration of justice at the United Nations" (see A/55/57). Accordingly, some of the recommendations in the present report are made on the basis of those put forth under the earlier study, which were specific to the situation in the United Nations. Members of the United Nations System Chief Executives Board for Coordination welcome the present report as a useful addition to the ongoing reform of the internal administration of justice in the United Nations system. They appreciate the proposals of the JIU Inspectors, which essentially extend or revise many of the recommendations made in the earlier report with a view to strengthening the appellate mechanisms in the United Nations system.

I. Introduction

1. The present report was prepared by the Joint Inspection Unit (JIU) pursuant to General Assembly resolution 55/258, part XI, paragraph 10, in which the General Assembly took note of the intention of JIU to continue its study of the possible need for higher-level jurisdiction in consultation with all organizations of the United Nations system, bearing in mind the national legal systems of Member States, and requested JIU to report thereon to the General Assembly at its fifty-seventh session.

II. General comments

2. Members of the United Nations System Chief Executives Board for Coordination (CEB) welcome the present report as a useful compilation of the various issues concerning the provision of options for higher recourse instances as part of the reform of the internal administration of justice in the United Nations system. They take the view that any such reform should take due account of the needs of the organizations of the United Nations system, but without compromising to any degree the importance of adequate mechanisms for swift and fair administration of justice. CEB members also point out that the International Labour Organization (ILO) Administrative Tribunal serves many organizations that do not belong to the United Nations system and that this consideration does not appear to have been taken into account by the JIU Inspectors in the formulation of their recommendations.

III. Comments on the recommendations of the Joint Inspection Unit

Recommendation 1:

Every effort should be made to ensure the independence of all bodies concerned with the administration of justice; whenever appropriate, organizations might wish to consider establishing independent offices grouping all bodies and institutions dealing with the administration of justice, as recommended by the Inspectors for the United Nations.

3. CEB members note that this recommendation is essentially the same as recommendation 1 of the earlier JIU report entitled "Administration of justice at the United Nations" (A/55/57), directed specifically to the situation of the United Nations, and that the Secretary-General's response (see A/55/57/Add.1, paras. 7-10) remains relevant. With respect to "establishing independent offices grouping all bodies and institutions dealing with the administration of justice" in the context of recommendation 1, CEB members point out that in the administration of justice in the organizations of the system other than the United Nations, staff are involved in the administration of justice on a part-time basis only, inasmuch as the volume of work does not justify the creation of an independent and separate office, and that this current arrangement is considered to be efficient and satisfactory.

Recommendation 2:

(a) **The organizations' capacity for informal conciliation, mediation and negotiation should be strengthened. Every organization that has not yet done so is encouraged to establish an independent, central ombudsman function performed by a senior official appointed by the executive head, in consultation with the staff representatives, for a single, non-renewable five-year term. This function should be complemented, at every major duty station, by a person or a panel responsible on a part-time basis for informal conciliation, mediation and negotiation functions under the overall guidance and supervision of the ombudsman.**

(b) **Following the example of certain judicial instances in the Member States, the ILO Administrative Tribunal and the United Nations Administrative Tribunal should be enabled to mediate between parties. This power should be expressly attributed to the tribunals so that, whenever deemed appropriate, they may resort to conciliation to resolve disputes, particularly those where no major legal issues are involved.**

4. With reference to recommendation 2 (a), it is noted that the Secretary-General has fulfilled his commitment to enhance mediation and conciliation at the United Nations by establishing on 25 October 2002 the Office of the Ombudsman, pursuant to General Assembly resolutions 55/258 and 56/253. The Ombudsman has been appointed, and Secretary-General's bulletin ST/SGB/2002/12 has been promulgated on the subject. CEB members suggest that it would be the prerogative of the Ombudsman to determine whether and under what conditions his/her office should be complemented by a person or a panel responsible for informal conciliation, mediation and negotiation functions under his/her overall guidance and supervision.

5. As regards the term of appointment of the Ombudsman, CEB members are of the view that the present report does not present sufficient justification as to why a uniform, single, non-renewable term of five years should be adopted for the Ombudsman in all of the organizations of the United Nations system.

6. As far as recommendation 2 (b) is concerned, CEB members note that attributing to the United Nations Administrative Tribunal the power "to mediate between parties" to a dispute (e.g., a staff member appealing an administrative decision by management) raises a number of issues, including the need to amend the statute of the Tribunal. In their view, adding a mediation function to the Tribunal's authority is not necessary, since once a case has reached the Tribunal, the most effective way of dealing with the dispute is through a ruling of the Tribunal.

7. CEB members point out that there already exist adequate opportunities and mechanisms to address staff appeals or potential appeals without the involvement of the United Nations Administrative Tribunal. Under the existing practice, when the Administrative Law Unit receives an appeal, it is expected to review the facts of the case and attempt to resolve the issue. Second, at any subsequent stage of the appeals process (e.g., during the consideration by the Joint Appeals Board, and even after an application to the Tribunal has been made), the parties have the opportunity to settle the appeal before it is actually considered by the Tribunal. In addition, the recently established Office of the Ombudsman is intended to assist staff and the administration in resolving their disputes without resorting to formal means of resolution.

Recommendation 3:

In considering the desirability of eventually merging the ILO Administrative Tribunal and the United Nations Administrative Tribunal, the competent legislative organs of the United Nations and ILO may wish to require the harmonization of the statutes and working procedures of the two tribunals in question, with special emphasis on the procedures for selecting their members, their competencies and jurisdictions as well as case laws; a detailed timetable for such a merger should be developed by the two tribunals in consultation with their participating organizations as appropriate.

8. CEB members point out that section V of the report of the Secretary-General entitled "Administration of justice in the Secretariat" addressed the issues raised in the above recommendation, and remains valid (see A/56/800, paras. 35-43).

9. In regard to the question of harmonization of the statutes, rules and practices of the ILO Administrative Tribunal and the United Nations Administrative Tribunal, CEB members recall that, in its decision 44/413 of 22 November 1989, the General Assembly decided to retain the existing statute of the United Nations Administrative Tribunal.

Recommendation 4:

(a) **Adopt as a general operating principle the practice of accepting the unanimous recommendations of these bodies, without prejudice to the authority of the executive heads in the discharge of their administrative responsibilities.**

(b) **Publish annual reports containing summarized information on the number and nature of the cases heard before joint appeals boards, joint disciplinary committees and similar advisory bodies, as well as general statistics on the disposition of such cases; the confidentiality of their proceedings should be preserved.**

(c) **Give appropriate consideration to the holding of oral hearings before all appellate bodies when these hearings could contribute to the settlement of disputes and expedite the disposition of cases.**

10. With respect to recommendation 4 (a), CEB members recall that insofar as the United Nations is concerned, since 1987 the Secretary-General has followed the policy of accepting the unanimous recommendations of the Joint Appeals Board, except where a major question of law or principle has been involved. The instances in which unanimous recommendations are not accepted occur when the Secretary-General believes that there have been compelling reasons of law or principle or departure from established practice. In all such cases, the reasons for non-acceptance are fully detailed. As for organizations other than the United Nations, generally executive heads do not agree with the JIU proposal for automatic acceptance of unanimous recommendations of appeal boards.

11. With regard to recommendation 4 (b), in paragraph 22 (a) of document A/56/800 the Secretary-General indicated that statistical information would be provided to monitor trends in the administration of justice and, following consultations with staff, it was agreed that this information would be prepared by the Joint Appeals Board and the Joint Disciplinary Committee. In addition, information

circular ST/IC/2002/25 was issued on 19 April 2002, informing all staff of the Secretary-General's policy on disciplinary matters and providing a summary of cases that had led to the imposition of one or more disciplinary measures. There is some concern that it may be difficult to maintain strict confidentiality regarding the nature of cases even if the reports are in summary form.

12. CEB members point out that, in the context of recommendation 4 (c), addressed to executive heads, under established principles of law each appellate body must decide for itself, without outside interference, whether an oral hearing is necessary in order to adequately consider a case, taking into account the facts of the case and all other relevant circumstances. Hearings are routinely held in disciplinary proceedings before the Joint Disciplinary Committee and the Joint Appeals Board for requests for suspension of action.

Recommendation 5:

The General Assembly may wish to request the Sixth Committee to study the desirability of establishing an ad hoc panel that would be responsible for reviewing the judgements of the existing two tribunals or a future single tribunal (see recommendation 3 above); the panel in question could include the following features:

(a) **It should be composed of a Chairperson designated by the President of the International Court of Justice and two members designated one each by the Presidents of the ILO Administrative Tribunal and United Nations Administrative Tribunal/legislative bodies of the International Labour Organization and the United Nations. The persons proposed to serve on this ad hoc panel should be eminent jurists, internationally recognized. Their term of office shall not exceed that of the members of the tribunals. A screening procedure should be established to avoid that this panel becomes inundated with unfounded appeals.**

(b) **Applications for review of the judgements of the tribunals may be founded on the following criteria: first, that the tribunal has exceeded its jurisdiction or competence; second, that the tribunal has failed to exercise jurisdiction vested in it; third, that the tribunal has erred on a question of law relating to the provisions of the United Nations Charter; fourth, that the tribunal has committed a fundamental error in procedure which occasioned a failure of justice; and fifth, that the tribunal has deviated substantially from its jurisprudence.**

(c) **The determinations and conclusions of the ad hoc panel shall be binding on the executive heads of the organizations and on the tribunals. The ad hoc panel shall not reopen the procedure but only review, as appropriate, a judgement, so that the tribunal that has issued it shall confirm or revise it in the light of the ad hoc panel's determinations and conclusions.**

13. CEB members note that the above recommendation is a further development of the concept of "a higher appeal instance" put forward in recommendation 5 of the previous report of JIU on the administration of justice at the United Nations (A/55/57). The comments of the Secretary-General in response to that recommendation (see A/55/57/Add.1, para. 27) remain relevant. In this context, CEB members further recall that, on a recommendation of the legal advisers of the

United Nations system, CEB decided in 2001 not to pursue the introduction of a second-tier appellate mechanism.

14. CEB members observe that the current JIU report presents a more detailed and revised proposal recommending that the General Assembly may wish to request the Sixth Committee to study the desirability of establishing an ad hoc panel that would be responsible for reviewing the judgements of the United Nations Administrative Tribunal and the ILO Administrative Tribunal (or of a proposed single tribunal). CEB members note that in its new proposal JIU is recommending the addition of a new basis for objection to the judgement of the tribunals: that the tribunal has deviated substantially from its jurisprudence. The appropriateness of this new criterion is seriously questioned by CEB members. They point out that such a new basis would suggest adherence to a principle of justice that would make previous decisions automatically binding in future cases and might impede the Tribunal from deviating or appearing to deviate from earlier jurisprudence where such deviation might be justified for a variety of legitimate reasons.

15. CEB members note that in recommendation 5 (c) the Inspectors envisage the decisions of the panel to "be binding on the executive heads of the organizations and on the tribunals" and at the same time stipulate that the panel "shall not reopen the procedure but only review, as appropriate, a judgement, so that the tribunal that has issued it shall confirm or revise it in the light of the ad hoc panel's determinations and conclusions". CEB members point out that these two provisions appear to be contradictory and merit clarification, regardless of the question of creating a second-tier appeal system.

16. In conclusion, CEB members point out that the General Assembly expressed its opinion on this matter in the preambular paragraph of its resolution 50/54, entitled "Review of the procedure provided for under article 11 of the statute of the Administrative Tribunal of the United Nations", where it noted, inter alia, that "the procedure provided for under article 11 of the statute of the Administrative Tribunal of the United Nations has not proved to be a constructive or useful element in the adjudication of staff disputes within the Organization". The Assembly consequently eliminated this procedure and amended the statute accordingly.

Recommendation 6:

The executive heads of the organizations should ensure collaboration with the staff associations in the development of comprehensive legal insurance schemes covering legal advice and representation for staff in these procedures, on the understanding that the organizations shall contribute towards these schemes only until such time as they are self-financing.

17. CEB members are of the view that more in-depth analysis of the implications and the financial viability of the proposed comprehensive legal insurance schemes would be necessary before this recommendation could be considered with a view to taking a decision.